

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JESSE L. SPENCER,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 00-898-SLR
)	
ROBERT SNYDER, Warden, and)	
ATTORNEY GENERAL OF THE)	
STATE OF DELAWARE,)	
)	
Respondents.)	

Jesse L. Spencer, Delaware Correctional Center, Smyrna, Delaware.
Petitioner, pro se.

Loren C. Meyers, Esquire, Chief of Appeals Division, Delaware
Department of Justice, Wilmington, Delaware.
Counsel for Respondents.

MEMORANDUM OPINION

Dated: July 24, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Petitioner Jesse L. Spencer is a state inmate in custody at the Delaware Correctional Center in Smyrna, Delaware. Currently before the court is petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 2) For the reasons that follow, the court concludes that petitioner's application is time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d)(1). Accordingly, the court will dismiss the petition as untimely.

II. BACKGROUND

Following a jury trial in the Delaware Superior Court, petitioner was convicted of assault, robbery, burglary, kidnaping, and four counts of possession of a deadly weapon during the commission of a felony. The Superior Court sentenced petitioner on September 22, 1995, to 103 years imprisonment, suspended after 100 years for decreasing levels of supervision. On direct appeal, the Delaware Supreme Court affirmed. Spencer v. State, No. 417, 1995, 1996 WL 415919 (Del. July 17, 1996).

Three years later, on July 16, 1999, petitioner filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court summarily dismissed the motion. State v. Spencer, No. 9402009418, 1999 WL 743314 (Del. Super. Ct. Aug. 3, 1999). The Delaware Supreme Court dismissed petitioner's postconviction

appeal as untimely. Spencer v. State, No. 407, 1999, 1999 WL 971069 (Del. Oct. 4, 1999).

Petitioner's application for federal habeas relief is now before the court.

III. DISCUSSION

A. One-Year Period of Limitation

In the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Congress amended the federal habeas statute by prescribing a one-year period of limitation for the filing of habeas petitions by state prisoners. Stokes v. District Attorney of County of Philadelphia, 247 F.3d 539, 541 (3d Cir.), cert. denied, 122 S. Ct. 364 (2001). Effective April 24, 1996, the AEDPA provides:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review

28 U.S.C. § 2244(d) (1).

As described above, the Delaware Supreme Court affirmed petitioner's conviction and sentence on July 17, 1996. Petitioner was then allowed ninety days in which to file a petition for a writ of certiorari with the United States Supreme Court. See Sup. Ct. R. 13.1. Although petitioner did not seek

review from the United States Supreme Court, the ninety-day period in which he could have filed such a petition is encompassed within the meaning of "the expiration of the time for seeking [direct] review," as provided in § 2244(d)(1)(A). See Kapral v. United States, 166 F.3d 565, 576 (3d Cir. 1999) (holding that on direct review, the limitation period begins to run at the expiration of the time for seeking review in the United States Supreme Court). Therefore, petitioner's conviction became final on October 15, 1996, ninety days after the Delaware Supreme Court affirmed his conviction and sentence.

The court's docket reflects that the current petition was filed on October 13, 2000. (D.I. 2) A pro se prisoner's habeas petition, however, is deemed filed on the date he delivers it to prison officials for mailing to the district court, not on the date the district court docket it. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Petitioner has provided the court with no documentation establishing the date he delivered his petition to prison officials for mailing. The petition itself, however, is dated September 29, 2000. (D.I. 2) In the absence of proof respecting the date of delivery, the court deems the petition filed on September 29, 2000. See Murphy v. Snyder, Civ. A. No. 98-415-JJF, at 4 (D. Del. Mar. 8, 1999).

In short, the one-year period began running when petitioner's conviction became final on October 15, 1996. His

habeas petition was filed nearly four years later on September 29, 2000. That, however, does not necessarily require dismissal of the petition as untimely, because the one-year period is subject to statutory and equitable tolling. See Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999).

B. Statutory Tolling

The AEDPA provides for statutory tolling of the one-year period of limitation as follows:

The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d) (2).

Here, petitioner filed a motion for postconviction relief in the Superior Court on July 16, 1999. The one-year period of limitation, however, expired on October 15, 1997, one year after his conviction became final. Petitioner's motion for postconviction relief, filed long after the one-year period expired, has no tolling effect in this matter. See Fisher v. Gibson, 262 F.3d 1135, 1142-43 (10th Cir. 2001) (stating that application for postconviction relief filed after the expiration of the one-year period has no tolling effect), cert. denied, 122 S. Ct. 1789 (2002); Collingwood v. Snyder, Civ. A. No. 00-783-SLR, 2002 WL 1446702, *3 (D. Del. June 28, 2002) (same).

In sum, petitioner filed his motion for postconviction

relief after the one-year period of limitation had expired. The court thus concludes that the statutory tolling provision does not apply.

C. Equitable Tolling

Additionally, the one-year period of limitation may be equitably tolled. Fahy v. Horn, 240 F.3d 239, 244 (3d Cir.), cert. denied, 122 S. Ct. 323 (2001); Jones, 195 F.3d at 159; Miller v. New Jersey State Dep't of Corr., 145 F.3d 616, 618 (3d Cir. 1998). The doctrine of equitable tolling applies

only when the principles of equity would make the rigid application of a limitation period unfair. Generally, this will occur when the petitioner has in some extraordinary way been prevented from asserting his or her rights. The petitioner must show that he or she exercised reasonable diligence in investigating and bringing [the] claims. Mere excusable neglect is not sufficient.

Miller, 145 F.3d at 618-19 (citations omitted). In other words, equitable tolling "may be appropriate if (1) the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his rights, or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum." Jones, 195 F.3d at 159 (quoting United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998)).

In the instant case, petitioner has failed to articulate any extraordinary circumstances that prevented him from filing his petition with this court in a timely manner. Indeed, he has failed to offer any explanation for the delay, and even

acknowledges that he "has not filed his petition within the statutory provision of § 2244(d)(1)." (D.I. 18, ¶ 5) Moreover, the court has independently reviewed the record, and can discern no extraordinary circumstances that warrant applying equitable tolling. Accordingly, the court will dismiss the petition as time barred.

IV. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. See Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When a federal court dismisses a habeas petition on procedural grounds without reaching the underlying constitutional claims, the petitioner must demonstrate that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." Id.

As discussed above, the court has concluded that the current habeas petition is time barred, and that neither the statutory tolling provision nor the doctrine of equitable tolling applies. The court is persuaded that reasonable jurists would not debate the correctness of these conclusions. Petitioner, therefore, has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability is not warranted.

V. CONCLUSION

For the reasons stated, the court will dismiss petitioner's application for a writ of habeas corpus, and will not issue a certificate of appealability. An appropriate order shall issue.

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O R D E R

At Wilmington, this 24th day of July, 2002, consistent with
the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Jesse L. Spencer's petition for a writ of
habeas corpus pursuant to 28 U.S.C. § 2254 (D.I. 2) is dismissed,
and the relief requested therein is denied.

2. The court declines to issue a certificate of
appealability for failure to satisfy the standard set forth in 28
U.S.C. § 2253(c)(2).

Sue L. Robinson
United States District Judge